

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LONNIE DONELL PERKINS,

Plaintiff,

v.

L. CHRONES, Director, California
Department of Corrections; ROBERT
HOREL, Former Warden, Pelican Bay
State Prison (PBSP); FRANCISCO
JACQUEZ, Warden (PBSP); K.
BRANDON, Captain at PBSP; McMillan,
Lieutenant at PBSP; B. THORNTON,
Correctional Officer at PBSP; A.
HEDGPETH, Warden at Kern Valley
State Prison (KVSP); C. J. CHRONES,
Chief Deputy Warden, KVSP; J. R.
GARZA, Lieutenant, KVSP; O. C.
HARRIS, Correctional Sergeant, KVSP;
J. OSTRANDER, Captain, KVSP; R.
CRUM, Correctional Officer, KVSP; C.
PFEIFFER, Correctional Counselor II,
KVSP; R. CLEMONS, Correctional
Officer, Los Angeles County (LAC);
EVERETTE W. FISCHER, Special
Agent, CDCR; G. WILLIAMS, Special
Agent, CDCR; McGRIFF, Special Agent,
CDCR; K. J. ALLEN, Appeals Examiner,
CDCR; and N. GRANNIS, Chief of
Inmate Appeals Branch, CDCR,

Defendants.

No. C 09-5855 PJH (PR)

**ORDER OF PARTIAL
DISMISSAL AND ORDER OF
SERVICE**

Plaintiff, an inmate at Pelican Bay State Prison, has filed a pro se civil rights
complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma
pauperis.

///

1 ///

2 **DISCUSSION**3 **A. Standard of Review**

4 Federal courts must engage in a preliminary screening of cases in which prisoners
 5 seek redress from a governmental entity or officer or employee of a governmental entity.
 6 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
 7 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may
 8 be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at
 9 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police*
 10 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

11 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of
 12 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;
 13 the statement need only "give the defendant fair notice of what the . . . claim is and the
 14 grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations
 15 omitted). Although in order to state a claim a complaint "does not need detailed factual
 16 allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief'
 17 requires more than labels and conclusions, and a formulaic recitation of the elements of a
 18 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
 19 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65
 20 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief
 21 that is plausible on its face." *Id.* at 1974. The United States Supreme Court has recently
 22 explained the "plausible on its face" standard of *Twombly*: "[w]hile legal conclusions can
 23 provide the framework of a complaint, they must be supported by factual allegations. When
 24 there are well-pleaded factual allegations, a court should assume their veracity and then
 25 determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129
 26 S.Ct. 1937, 1950 (2009).

27 **B. Legal Claims**

28 Plaintiff presents two claims in his complaint. One is against the Kern Valley State

1 Prison defendants, the California State Prison-Los Angeles County defendant, and the
2 CDCR special agents, for improperly validating him as a member of a prison gang. The
3 other is against Pelican Bay State Prison defendants for blocking him from mailing out a
4 manuscript of what he contends was his autobiography. The claims are distinct and thus
5 not properly joined, so the first claim and associated defendants will be dismissed without
6 prejudice. See Fed. R.Civ.P. 20(a)(2).

7 In the claim arising at Pelican Bay State Prison, plaintiff contends that defendants B.
8 Thornton and K. Brandon rejected plaintiff's attempt to mail out 140 pages of what he
9 contends was his autobiography. Evidently they blocked it because of they feared it
10 contained gang communications. He appealed the rejection; defendant McMillan denied it
11 at the second level on behalf of Warden Jacquez, and at the third formal level defendant K.
12 J. Allen, an appeals examiner, denied it.

13 A district court reviewing whether a prisoner states a claim for the censorship of
14 outgoing mail should not decide, on the pleadings, whether the alleged censorship is
15 justified. See *Barrett v. Belleque*, 544 F.3d 1060, 1062 (9th Cir. 2008) (per curiam) (holding
16 district court erred by dismissing complaint for failure to state a claim by deciding on the
17 pleadings that censorship was justified). A prisoner complaint that unequivocally pleads
18 facts alleging that prison officials censored a prisoner's outgoing mail and punished him for
19 its contents states a claim that is clearly cognizable under *Procunier v. Martinez*, 416 U.S.
20 396, 413 (1974), *overruled on other grounds*, *Thornburgh v. Abbott*, 490 U.S. 401, 413-14
21 (1989). *Barrett v. Belleque*, 544 F.3d 1060, 1062 (9th Cir. 2008) (per curiam).

22 Plaintiff's allegations are sufficient to state a claim against Thornton and Brandon. It
23 appears that McMillan and Allen, who answered plaintiff's appeals, had the power to
24 reverse the decision by Thornton and Brandon, which also is sufficient to state a claim
25 against them.

26 The claims against Warden Jacquez and Director of Corrections Chrones are
27 respondeat superior claims, that is, claims that they are liable simply because they are the
28 superiors of those who plaintiff contends actually violated his rights, and thus will be

1 dismissed. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (under no
2 circumstances there liability under section 1983 solely because defendant is the superior of
3 someone who violated plaintiff's rights (respondeat superior liability)). There are no
4 allegations regarding the former warden at PBSP, Robert Horel, and as to N. Grannis, head
5 of the Inmate Appeals Branch, plaintiff contends only that Allen signed the denial of his
6 administrative appeal on behalf of Grannis. These allegations are insufficient to state a
7 claim against Horel or Grannis.

8 CONCLUSION

9 1. The claims against defendants A. Hedgpeth, C. J. Chrones, J. R. Garza, O. C.
10 Harris, J. Ostrander, R. Crum, C. Pfeiffer, R. Clemons, Everette W. Fischer, G. Williams,
11 McGriff, and K. J. Allen are **DISMISSED** without prejudice.

12 2. The claims against defendants Jacquez, Chrones, Horel and Grannis are
13 **DISMISSED** for failure to state a claim.

14 3. The clerk shall issue summons and the United States Marshal shall serve,
15 without prepayment of fees, copies of the complaint with attachments and copies of this
16 order on the following defendants: B. Thornton, Correctional Officer, PBSP; K. Brandon,
17 Captain, PBSP; McMillan, Lieutenant, PBSP; and K. J. Allen, Appeals Examiner, CDCR,
18 Sacramento.

19 4. In order to expedite the resolution of this case, the court orders as follows:

20 a. No later than sixty days from the date of service, defendants shall file a
21 motion for summary judgment or other dispositive motion. The motion shall be supported
22 by adequate factual documentation and shall conform in all respects to Federal Rule of
23 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
24 from the events at issue. If defendants are of the opinion that this case cannot be resolved
25 by summary judgment, they shall so inform the court prior to the date their summary
26 judgment motion is due. All papers filed with the court shall be promptly served on the
27 plaintiff.

28 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the

1 court and served upon defendants no later than thirty days from the date the motion was
2 served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING,"
3 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
4 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

5 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed to
6 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff
7 should take note of the attached page headed "NOTICE -- WARNING (EXHAUSTION),"
8 which is provided to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th
9 Cir. 2003).

10 c. If defendants wish to file a reply brief, they shall do so no later than fifteen
11 days after the opposition is served upon them.

12 d. The motion shall be deemed submitted as of the date the reply brief is
13 due. No hearing will be held on the motion unless the court so orders at a later date.

14 5. All communications by plaintiff with the court must be served on defendants, or
15 defendants' counsel once counsel has been designated, by mailing a true copy of the
16 document to defendants or defendants' counsel.

17 6. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
18 informed of any change of address by filing a separate paper with the clerk headed "Notice
19 of Change of Address." He also must comply with the court's orders in a timely fashion.
20 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
21 Federal Rule of Civil Procedure 41(b).

22 **IT IS SO ORDERED.**

23 Dated: February 16, 2010.



PHYLLIS J. HAMILTON
United States District Judge

24
25
26
27 P:\PRO-SE\PJH\CR.09\PERKINS5855.SERVE.wpd
28

NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

NOTICE -- WARNING (EXHAUSTION)

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.